

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 15, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rufus P. Norgbey


Gerard Cabrera, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Rufus P. Norgbey, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-090) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

COPY

**IN THE MATTER
OF
RUFUS P. NORGBEY, R.P.A**

**DETERMINATION
AND
ORDER**

BPMC #16-090

The New York State Department of Health ("Department") charged Rufus P. Norgbey ("Respondent"), registered physician assistant, with professional misconduct in violation of New York State Education Law § 6530(29). The Department alleges that Respondent violated terms and conditions imposed on his registration to practice as a physician assistant, under State Board for Professional Medical Conduct ("BPMC") Order Number 14-68.

A hearing was held on January 7, 2016, at the office of the Department. Calvin J. Simons, M.D., Chair, Steven M. Lapidus, M.D., and James J. Ducey, duly designated members of the BPMC, served as the Hearing Committee ("Committee"). Jankhana Desai served as the Administrative Law Judge ("ALJ").

The Department appeared by Gerard Cabrera, Associate Counsel for the Bureau of Professional Medical Conduct. Respondent did not appear at the hearing. Evidence was received and a transcript of the proceeding was made. After consideration of the entire record, the Committee votes 3-0 to sustain the charge of professional misconduct and revoke Respondent's registration to practice as a physician assistant.

PROCEDURAL HISTORY

The hearing was initially scheduled to be held on September 17, 2015. On September 16, 2015, a telephone conference call was held with Respondent. Respondent advised the ALJ that he was in Ghana, Africa until December 15, 2015, that he was sick, and that he wanted an opportunity to appear at the hearing. Respondent's request for an adjournment in order to appear was granted and, after a series of adjournments, the hearing was scheduled for January 7, 2016.

Upon Respondent's request made during the September 16, 2015 conference call, the Department mailed a notice with the new hearing date to Respondent's son's address. Respondent did not appear at the hearing held on January 7, 2016, nor did he request any further adjournment.

The Notice of Hearing states the following:

Pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge and allegation not so answered shall be deemed admitted.

Respondent failed to file any answer to the charges and allegations in the Statement of Charges. At the Department's request, and pursuant to New York Public Health Law ("PHL") 230(10)(c), the ALJ ruled that the charges and allegations were deemed admitted. Corsello v. New York State Dept. of Health, 300 A.D.2d 849 (3rd Dept. 2002).

FINDINGS OF FACT

The following Findings of Fact were made unanimously by the Committee:

1. On May 4, 1992, Respondent was registered by the New York State Education Department to practice as a physician assistant under license number 004253.

2. On March 31, 2014, Respondent became subject to BPMC Order #14-68 ("Order"). The Order was issued upon Respondent's Application for a Consent Agreement to settle a previous allegation of professional misconduct.

3. The Consent Agreement, which was signed by Respondent on March 7, 2014, stipulated that his failure to comply with any term or condition of the Order "shall constitute misconduct as defined by New York Education Law § 6530(29)."

4. The Order required Respondent to enroll in and complete a continuing education program in anger management within six months of the effective date of the Order.

5. Respondent failed to enroll in or complete a continuing education program in anger management as required.

6. The Order also imposed a condition that Respondent cooperate fully with the Office of Professional Medical Conduct ("OPMC") in its administration and enforcement of the Order and in its investigations of matters concerning Respondent. The Order required Respondent to: (1) respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with the Consent Agreement; (2) meet as and when directed with a person designated by OPMC; and (3) respond promptly to any OPMC request and provide all documents and information within Respondent's control.

7. Respondent failed to cooperate with OPMC in its administration and enforcement of the Order as follows:

(a) By letter dated March 27, 2014, the Physician Monitoring Program ("PMP") directed Respondent to complete and return a data sheet within 15 days and to contact PMP to schedule a meeting. No response was received.

(b) In July 2014, Respondent contacted OPMC, at which time he spoke to OPMC personnel and a date for a meeting was arranged. In a letter dated July 21, 2014, OPMC personnel sent a confirmation letter for Respondent to appear at a meeting on July 29, 2014. Respondent did not appear at the meeting, nor did he call to cancel or reschedule.

(c) In November 2014, OPMC personnel sent Respondent an offer for interview via certified and regular mail. The certified letter came back as undeliverable, and the letter sent by regular mail was not returned. Respondent did not answer the letter.

LEGAL CONCLUSIONS

Respondent was charged with committing professional misconduct, as defined in N.Y. Educ. Law § 6530(29), by violating terms and conditions imposed on his registration, pursuant to PHL § 230 and BPMC Order #14-68. Respondent was deemed to have admitted the factual allegations and specifications of misconduct contained in the Statement of Charges because he failed to file a written answer. In addition, the Department's documents admitted into evidence fully support the allegations.

Respondent failed to enroll in the course he agreed to as part of his Consent Agreement, repeatedly failed to meet with or provide information to the OPMC, and failed to cooperate with or respond to efforts made by OPMC to communicate with him about these issues. All of these acts were in violation of conditions imposed on his registration pursuant to PHL§ 230 and BPMC Order #14-68. The Committee unanimously sustains the Findings of Fact and Specification of Misconduct contained in the Statement of Charges.

The Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. Respondent's failure to follow through the terms and conditions of the

Order that he agreed to, and his failure to respond to repeated attempts by the OPMC to contact him evidences serious disregard for the responsibilities of his registration. Respondent's disregard for his responsibilities under the Order is particularly troubling given that the Order represented a second chance to maintain his registration in good standing. Respondent's failure to appear at this hearing, after specifically requesting and being granted adjournments in order to appear, left the Committee without an understanding for these failures and further demonstrated his continuing disregard for his professional responsibilities.¹ The Committee unanimously concludes that Respondent's registration to practice as a physician assistant must be revoked.

¹ The Committee also noted that Respondent failed to maintain his current registration with the Education Department.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. Respondent's registration to practice as a physician assistant in New York State is hereby **REVOKED**.
3. This Determination and Order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required by PHL 230(10)(h).

DATED: March 11, 2016


CALVIN J. SIMONS, M.D., Chair

Steven M. Lapidus, M.D.
James P. Ducey

To:

Rufus P. Norgbey


Gerard Cabrera
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

RUFUS P. NORGBEY, R.P.A.

STATEMENT

OF

CHARGES

RUFUS P. NORGBEY, the Respondent, was authorized to perform medical services as a physician assistant in New York State on or about May 4, 1992, by the issuance of license number 004253, by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 31, 2014, Respondent became subject to BPMC Order #14-68 (the "Order", attached as "Appendix A"), which was issued, upon Respondent's Application for a Consent Agreement, by the State Board for Professional Medical Conduct. Respondent's Application was based upon his agreement not to contest a professional misconduct charge, pursuant to § 6530 9(a)(i) of the Education Law, of being convicted of committing an act constituting a crime under New York State law.

1. The Order, among other things, imposed a condition, pursuant to §230 of the Public Health Law, that Respondent "enroll in and complete a continuing education program in Anger Management. This continuing education program is subject to the prior written approval of the Director, OPMC, [Office of

Professional Medical Conduct], and shall be complete within six months of the effective date of the Order."

- a. Respondent failed to enroll in and complete a continuing education program in Anger Management as required.
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2. The Order, also, among other things, imposed a condition, pursuant to §230 of the Public Health Law, that Respondent "shall cooperate fully with the OPMC in its administration and enforcement of the Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Agreement. Respondent shall meet with a person designated by the Director, OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State."
- a. Respondent has failed to provide OPMC with written information, failed to respond timely to OPMC requests and communications, failed to meet with an OPMC designated person, and otherwise failed to cooperate fully with the Order's administration and enforcement.

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law § 6530 (29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to Public Health Law § 230, as alleged in the facts set forth in:

1. Paragraphs A, and its subparagraphs.

DATE: July 17, 2015
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct